IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 130 OF 1990

The State of Maharashtra .. Appellant

versus

Laxman Ramchandra Kumbhar & Anr... Respondents

...

Mr.D.P. Adsule, APP for the appellant-State.

Mr.Vijay Patil for the respondent.

CORAM : V.M. KANADE, J

DATED : 10th September 2004.

ORAL JUDGEMENT :-

1. Heard the learned APP appearing on behalf of the appellant. Heard Shri Patil appearing on behalf of the respondent accused.

2. The State has preferred this appeal challenging the order of acquittal passed by Chief Judicial Magistrate, Satara dated 29th November 1989

whereby the respondents were acquitted for the offence punishable under section 325 r/w section 34 of the Indian Penal Code.

3. The prosecution case in brief is that the complainant and the accused were residents of the same village. The incident occurred on 5th August 1988. The prosecution story is that the accused assaulted the complainant. Initially, a non cognizable offence was registered and thereafter, it was registered as a cognizable offence under section 325 r/w sec.34 of the IPC. The prosecution examined 8 witnesses. PW no.1 was a complainant. PW no.2 and PW no.3 are the sons of the complainant. PW nos.4, 6 and 7 are the panch witnesses. PW no.5 is a Doctor who had examined the injury and PW no.8 is the Investigating Officer. The trial Court while appreciating the evidence has observed that there is a discrepancy between the medical evidence and the ocular evidence. Similarly, the Court also has taken into consideration that contradictions in the FIR and the statement of the complainant. The Court has further observed that the evidence of the son of the complainant also is unbelievable particularly when he mentioned that the accused were assaulting his father and he continued to

beat him for about 40 minutes which is not borne out from the evidence.

4. The trial Court also has observed that no independent eye witnesses were available. The prosecution has not examined those witnesses and the trial Court has therefore drawn an adverse inference against the prosecution. The Court has also observed that the Investigating Officer could not given an explanation as to why offence was initially registered as non-cognizable offence and therefore, it was registered as a cognisable offence on 23rd August 1998 when the medical certificate was received by the police on 3rd September 1988. The trial Court has also further observed that the case of the complainant and his son was inconsistent and contradictory to each other.

5. I have perused the oral evidence and I find that the observations made by the trial Court are correct. The accused no.2 died during the pendency of the appeal and the appeal has abated so far as accused no.2 is concerned. The incident in question is of 1988.

6. In view of all this, order of the trial Court

is confirmed. Appeal is dismissed.

V.M. KANADE, J